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The Socratic Method as a Pedagogical Method in Legal Education

Abstract

The Socratic Method has been traditionally regarded as the core of legal pedagogy. It has come to define legal education for nearly two centuries and remains a potent influence on the method of instruction found in most modern law schools around the globe. In particular, the Socratic Method is almost universally acknowledged as the defining characteristic of the American legal education system. In fact, the Socratic Method is so entrenched in modern American legal pedagogy that it has been opined that 'a law school just isn't a law school without the Socratic method.' In the Australian context, the suggestion that Australian law teachers do use the Socratic style of teaching is not entirely accurate. Morgan argues that 'it is used, perhaps not identified under the particular Socratic rubric.

However, the Socratic Method, once the fundamental and irreplaceable tool of legal pedagogy appears to be declining in popularity and use. It has also been the subject of harsh and sustained challenges by a rising number of scholars who assail its methodological foundations and its efficacy as a teaching tool. There is a notable increase in the number of academic literature by law professors and even law practitioners dedicated to explore and discover new and better ways to teach law and to adopt and take advantage of new learning theories or advances in technology to provide new and better tools for teaching law. This trend of self-inquiry into the manner of teaching in law schools should be regarded as a positive development.

This paper will examine the Socratic Method, a pedagogical technique used in law schools. This paper will be divided into three parts. In the first part, and by way of introduction, will investigate the origins and rationale of the Socratic Method as a pedagogical method used in legal education. The second part will analyse and examine existing studies and literature regarding the effectiveness of the Socratic Method as a teaching method in law schools, highlighting benefits and criticisms against it. The third part will evaluate alternate teaching methodologies used in law schools suitable to prepare law students for the legal profession. The last part and by way of conclusion will include a synthesis as well as personal reflections on the Socratic Method as a pedagogical tool in legal education.

Keywords

pedagogical, legal, method, socratic, education

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The Socratic Method as a Pedagogical Method in Legal Education

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1. Introduction

The Socratic Method has been traditionally regarded as the core of legal pedagogy.¹ It has come to define legal education for nearly two centuries and remains a potent influence on the method of instruction found in most modern law schools around the globe.² In particular, the Socratic Method is almost universally acknowledged as the defining characteristic of the American legal education system.³ In fact, the Socratic Method is so entrenched in modern American legal pedagogy that it has been opined that 'a law school just isn't a law school without the Socratic method.'⁴ In the Australian context, the suggestion that Australian law teachers do use the Socratic style of teaching is not entirely accurate. Morgan argues that 'it is used, perhaps not identified under the particular Socratic rubric.'⁵

However, the Socratic Method, once the fundamental and irreplaceable tool of legal pedagogy appears to be declining in popularity and use.⁶ It has also been the subject of

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¹ James R. Beattie, Jr., 'Socratic Ignorance: Once more into the Cave', (2003) 105 *West Virginia Law Review* 471, at 472.

² Ryan Patrick Alford, 'How Do You Trim The Seamless Web? Considering The Unintended Consequences Of Pedagogical Alterations,' (2009) 77 *University of Cincinnati Law Review* 1273 at 1273, who states that the Socratic Method is the "hallmark pedagogical method of an intellectual tradition that has been inextricably intertwined with law for centuries." See, Kuan-Chun Chang, 'The Teaching of Law in the United States: Studies on the Case and Socratic Methods in Comparison with Traditional Taiwanese Pedagogy,' (2009) 4 *National Taiwan University Law Review* 3.

³ Orin S. Kerr, 'The Decline of the Socratic Method at Harvard,' (199) 78 *Nebraska Law Review* 113, 113; Steven I. Friedland, 'How We Teach: A Survey of Teaching Techniques in American Law Schools' (1996) 20 *Seattle University Law Review* 1 at 1. But see, Donald G. Marshall, 'Socratic Method and the Irreducible Core of Legal Education', (2005-2006) 90 *Minnesota Law Review* 1 at 2, who argues that "Popular myth has it that Socratic method is pervasive in American law schools. But nothing could be further from the truth."

⁴ David D. Garner, 'Socratic Misogyny? Analyzing Feminist Criticisms of Socratic Teaching in Legal Education,' (2000) 2000 *Brigham Young University Law Review* 1597 at 1597.

⁵ Jenny Morgan, 'The Socratic Method: Silencing Cooperation' (1989) 1 *Legal Education Review* 151 at 152

⁶ See for example, Orin S. Kerr, 'The Decline of the Socratic Method at Harvard,' (199) 78 *Nebraska Law Review* 113, 113-14, who argue that "Despite this perception, the traditional Socratic method is today more myth than reality."

harsh and sustained challenges by a rising number of scholars who assail its methodological foundations and its efficacy as a teaching tool.⁷ There is a notable increase in the number of academic literature by law professors and even law practitioners dedicated to explore and discover new and better ways to teach law and to adopt and take advantage of new learning theories or advances in technology to provide new and better tools for teaching law.⁸ This trend of self-inquiry into the manner of teaching in law schools should be regarded as a positive development.

This paper will examine the Socratic Method, a pedagogical technique used in law schools. This paper will be divided into three parts. In the **first part**, and by way of introduction, will investigate the origins and rationale of the Socratic Method as a pedagogical method used in legal education. The **second part** will analyse and examine existing studies and literature regarding the effectiveness of the Socratic Method as a teaching method in law schools, highlighting benefits and criticisms against it. The **third part** will evaluate alternate teaching methodologies used in law schools suitable to prepare law students for the legal profession. The **last part** and by way of conclusion will include a synthesis as well as personal reflections on the Socratic Method as a pedagogical tool in legal education.

2. The Socratic Method as a pedagogical method used in legal education

2.1. The Origins of the Socratic Method

The "Socratic Method," is perhaps inaccurately named, in honour of the great Greek philosopher Socrates, whose method of philosophical discourse involved questioning others.⁹ It is posited that Socrates' questions would reveal the hidden ignorance on a subject and bring the person questioned to a revelation of knowledge or truth that he or she

⁷ Peter M. Cicchino, 'Love and the Socratic Method' (2001) 50 *American University Law Review* 553 at 534, who argue that the Socratic Method "is singularly unhelpful, indeed, almost guarantees pedagogical failure." Of course, academic literature arguing in the defence of the Socratic Method is as numerous. See for instance, Burnele V. Powell, 'A Defense of the Socratic Method: An Interview with Martin B. Louis (1934-94)', (1995) 73 *North Carolina Law Review* 957; Mary Kate Kearney and Mary Beth Beazley, Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process (1991) 64 *Temple Law Review* 885.

⁸ Jeffrey D. Jackson, 'Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?' (2007) 43 *California Western Law Review* 267, 268; Craig T. Smith, Synergy and Synthesis: Teaming "Socratic Method" with Computers and Data Projectors to Teach Synthesis to Beginning Law Students, (2001) 7 *The Journal of the Legal Writing Institute* 113.

⁹ Lisa Zamosky, *Socrates: Greek Philosopher* (2007) 21; Gregory Vlasto, *Studies in Greek Philosophy: Socrates, Plato, and their Tradition* (Volume 1, 1995) 18.

innately possessed.¹⁰ In its simplest form, the Socratic Method could be characterised as a method of teaching by question and answer akin to the one supposedly used by Socrates to elicit truths from his students.¹¹

2.2. The Socratic Method in Legal Education

In legal education, the "Socratic Method" is generally attributed to Christopher Columbus Langdell, Dean of Harvard Law School.¹² Black's Law Dictionary defines it as a technique of philosophical discussion and of law school instruction by which the questioner (a law professor) questions one or more followers (the law students).¹³ It was introduced as a formal methodological approach to legal education in the nineteenth century as a clear demarcation from previous legal studies from self-study or apprenticeship.¹⁴ Whilst there is a substantial amount of academic literature on the use of the Socratic Method in law schools, there is no clear agreement both on its definition as well as its value as a pedagogical tool. In the words of Professor Torrey: 'In reviewing the literature about the Socratic Method, one thing became immediately clear: not only is there no agreement on the value of this pedagogical tool, but there also is no agreement on exactly what it is!'¹⁵

3. The effectiveness of the Socratic Method as a teaching method in law schools

3.1. Benefits of the Socratic Method

The Socratic Method has been praised for many reasons. Professor Stone has identified a number of virtues in its use in legal education as it aims "to develop crucial legal analytic skills, to accustom the student to the lawyer's adversary style of exchange, and to provide a forum in which the student speaks in public."¹⁶ Scheider argues that the Socratic method is vital to American legal education it is "the best way of teaching a student to think like a lawyer. And not just like a lawyer, but like the kind of lawyer we think we want-analytically

¹⁰ Peter M. Cicchino, 'Love and the Socratic Method' (2001) 50 *American University Law Review* 553, 540-544.

¹¹ Christie A. Linskens Christie, 'The Socratic Method in Legal Education: Uses, Abuses and Beyond,' 2010 (12) *European Journal of Law Reform* 340 at 340.

¹² David D. Garner, Socratic Misogyny? Analyzing Feminist Criticisms of Socratic Teaching in Legal Education, (2000) 2000 *Brigham Young University Law Review* 1597 at 1599.

¹³ Bryan Garner and Henry Campbell Black, *Black's Law Dictionary* (2004) 1425.

¹⁴ Lawrence M. Friedman, *A History of American Law* (1973) 525-526.

¹⁵ Morrison Torrey, 'You Call that Education?' (2004) 19 *Wisconsin Women's Law Journal* 93 at 100.

¹⁶ Alan A. Stone, "Legal Education on the Couch, (1971) 85 *Harvard Law Review* 392 at 409.

keen, problem-solving, creative.¹⁷ Professor Stropus summarises that this teaching method will "foster analytical skills, encourage independent learning and provide students with the opportunity to practice and refine verbal and rhetorical skills."¹⁸

Professor Hawkins-Leon asserts that the Socratic Method helps students to: develop analytical skills; think on their feet; engage in intellectual rigor; learn about the legal process; and learn about the lawyer's role.¹⁹ Professor Del Duca states that there are three very important benefits of the Socratic Method: first, it gives professors the ability to teach large bodies of students in an active manner; second, it is instrumental in teaching cognitive skill development -- to teach students to "think like a lawyer"; and finally, it helps students to hone their verbal skills.²⁰

3.2. Criticisms of the Socratic Method

There are numerous criticisms against the Socratic Method. The main criticisms could be categorised into three: *first*, that the method is ineffective; *second*, that it creates unnecessary psychological pressures and *lastly*, that the method is discriminatory against women.²¹ The Socratic Method of teaching has been attacked as "infantilizing, demeaning, dehumanizing, sadistic, a tactic for promoting hostility and competition among students, self-serving, and destructive of positive ideological values."²²

While the Socratic Method has been acclaimed for its emphasis on critical thinking as opposed to rote learning, some of the criticisms of this method of teaching of critical skills include: the responsibility placed on the teacher for questioning, the reliance on working in small groups, the limitation in the amount of content that can be handled, among others.²³

¹⁷ Carl E. Schneider, 'On American Legal Education', (2001) 2 *Asian-Pacific Law & Policy Journal* 76 at 81.

¹⁸ Ruta K. Stropus, Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century, (1996) 27 *Loyola University of Chicago Law Journal* 449 at 455.

¹⁹ Cynthia G. Hawkins-Leon, 'The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues,' (1998) 1998 *Brigham Young University Law Review* 1 at 5.

²⁰ Louis F. Del Duca, 'Educating Our Students for What? The Goals and Objectives of Law Schools in Their Primary Role of Educating Students-How Do We Actually Achieve Our Goals and Objectives?' (2010-2011)29 *Penn State International Law Review* 95 at 100.

²¹ Christopher M. Ford, *The Socratic Method in the 21st Century*, at 2, online: http://www.usma.edu/cfe/literature/ford_08.pdf. Date accessed: 14 April 2014.

²² Alan A. Stone, "Legal Education on the Couch, (1971) 85 *Harvard Law Review* 392, 407.

²³ Christie A. Linskens Christie, 'The Socratic Method in Legal Education: Uses, Abuses and Beyond,' 2010 (12) *European Journal of Law Reform* 340, at 342.

Furthermore, the emphasis on adversarial skills inaccurately portrays the practice of law which involves legal work such as preparation for litigation which is cooperative rather than adversarial.²⁴ Professor Stropus has summarized three areas of concern with the use of the use of the Socratic Method in law schools: first, the method ‘necessarily involves psychological scarring’; second, the method is overly formalistic and theoretical; and finally, the methodology has adverse effects on an increasingly diverse law school population.²⁵

4. Alternative teaching methodologies to prepare law students for the legal profession

There are a number of teaching methods employed in law schools, the two primary methods of law teaching being the Socratic Method and the Problem Method.²⁶ There is also the “case method” or the utilization of casebooks as teaching materials,²⁷ the “problem method”, the lecture and online and computer-based legal education. These different methods will be discussed in this section briefly.

4.1. The Problem Method

In the “problem method”, the task of the student is to focus on a problem or problems posed in advance of the class and find the solution by drawing on material assigned to be studied in connection with them.²⁸ This method has three distinct components: The method has three parts to it: first, the assignment of problem statements for solution; second, the use of course or other materials to solve problems; and thirdly, the discussion of solutions in class.²⁹

4.2. The Case Method

The “case method” as a teaching approach consists in presenting students with a case, from which the students will learn principles directly, instead of deriving them textbooks. In the case method, the students are given a list of references which consists of cases which the

²⁴ Carrie Menkel-Meadow, Portia in a Different Voice: Speculations on a Women's Lawyering Process, (1985) 1 Berkeley Women's Law Journal 39 at 54.

²⁵ Ruta K. Stropus, Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century, (1996) 27 *Loyola University of Chicago Law Journal* 449 at 456.

²⁶ Cynthia G. Hawkins-Leon, ‘The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues,’ (1998) 1998 *Brigham Young University Law Review* 1, 1.

²⁷ Kuan-Chun Chang, The Teaching of Law in the United States: Studies on the Case and Socratic Methods in Comparison with Traditional Taiwanese Pedagogy,’ (2009) 4 *National Taiwan University Law Review* 3, 5.

²⁸ Gregory L. Ogden, ‘The Problem Method in Legal Education’, (1984) 34 *Journal of Legal Education* 654, 655.

²⁹ Ibid.

need to read before their class. The cases are dissected and discussed freely in class under the direction of the instructor, decisions are compared and rulings contrasted in order to cull legal principles as developed from a series of cases or jurisprudence examined.³⁰

4.3. The Lecture and Seminar

The lecture as a teaching style in law school is teacher-oriented. In a law lecture, the teacher delivers a prepared lesson, 'student contribution is not encouraged and where student contribution occurs, it is likely to take the form of clarificatory questions.' In contrast, in a seminar or tutorial, 'the majority of contributions come from students, and students engage in a dialogue with each other, as well as with the teacher.'³¹

4.4. Online and Computer-based Legal Education

The use of modern technology in the delivery of legal instruction, although not widely practiced, is available in some law schools.³² Online and computer-based legal education is conducted through the use of a combination of software and hardware, as well as the delivery of online content through the internet.³³ However, the use of online learning techniques and distance education methodologies are still at their nascent stages and still largely and generally not widely adopted in legal education.

5. Conclusion

5.1. The Imperative to Examine Legal Education

The examination of the Socratic Method as a pedagogical tool in law schools should be regarded as a cathartic process.³⁴ At a broader level, legal education needs to closely

³⁰ Bruce A. Kimball, 'The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell's Emblematic "Abomination," 1890-1915' (2006) 46 *History of Education Quarterly* 192 at 194.

³¹ Jenny Morgan, 'The Socratic Method: Silencing Cooperation' (1989) 1 *Legal Education Review* 151 at 152.

³² In fact, it has already been available in the US as early as the 1970s. See for example, Peter B. Maggs and Thomas D. Morgan, Computer-Based Legal Education at the University of Illinois: A Report of Two Years' Experience, (1975-1976) 27 *Journal of Legal Education* 138.

³³ Alan Davidson, 'Electronic Legal Education' (2003) 2 *Journal of Commonwealth Law and Legal Education* 15 at 16, 24.

³⁴ Steven I. Friedland, 'How We Teach: A Survey of Teaching Techniques in American Law Schools' (1996) 20 *Seattle University Law Review* 1 at 2, for instance, who did a national survey of US law schools argues that a 'conscious evaluation of the law school teaching process and the assumptions upon which that pedagogy is based ... is premised on the belief that such a conscious evaluation of teaching objectives and methods might lead to change and improvement.'

scrutinized. Law schools have been criticised for “failing to effectively prepare students for the practice of law, being too theoretical and too detached from the profession, and offering a dehumanizing and alienating educational experience.”³⁵ However, real transformative changes have not occurred and “twenty-first century legal education looks a lot like it did in the late nineteenth century.”³⁶

In general, legal education has been criticised for overly focusing on the cognitive aspects of being a lawyer whilst ignoring the behavioural, experiential, affective and aspects of the profession.³⁷ The confrontational and adversarial nature of the Socratic Method does not accurately capture the role of lawyers in negotiation, dispute avoidance and non-contentious dispute resolution. This has given rise to a “culture of combativeness” amongst lawyers.³⁸ In the words of Shutz, ‘teaching students to be tough, analytical and quick on their feet gives them useful skills for the “real world”, but the perception that these are the only useful skills for a lawyer and that they are appropriate or necessary in every context... is erroneous.’³⁹

5.2. The Role of Law Schools in Producing Lawyers

Indeed, knowing how to ‘think like a lawyer’ is a prized and essential skill for every lawyer to possess. However, it is just one among a set of skills that lawyers utilise to resolve legal problems.⁴⁰ The same is true for the Socratic Method. It is just one among many tools that law professors use to achieve a single goal: to teach and train a new generation of lawyers.⁴¹ However, I do not agree that the “best approach” probably will involve all the methods of teaching ... and probably some that no one has yet used.⁴² Teaching law is never a haphazard activity. Law schools should be mindful of their ‘important role in shaping their

³⁵ Eli Wald and Russell G. Pearce, ‘Making Good Lawyers’ (2011) 9 *University of St. Thomas Law Journal* 411,

³⁶ *Ibid*, 412.

³⁷ C Menkel-Meadow, ‘What’s Missing from the McCrate Report-of Skills Legal Science and Being a Human Being’ (1994) 69 *Washington Law Review* 593 at 596, 616.

³⁸ C Sampford and S Condlin, ‘Educating Lawyers for Changing Process’ in Charles J. G. Sampford, Sophie Blencowe, and Suzanne Condlin (eds), *Educating Lawyers for a Less Adversarial System* (Federation Press, 1999) 173 at 207.

³⁹ N L Shultz, ‘How do Lawyers Really Think?’ (1992) 42 *Journal of Legal Education* 57 at 65.

⁴⁰ Peter Toll Hoffman, ‘Teaching Theory Versus Practice: Are We Training Lawyers Or Plumbers?’ (2012) *Michigan State Law Review* 625 at 643

⁴¹ Daniel J. Dye, ‘Debunking The Socratic Method?: Not So Fast, My Friend! (2010) 3 *Phoenix Law Review* 351 at 352.

⁴² Ruth V. McGregor, ‘Response To Bang Goes The Theory-Debunking Traditional Legal Education’ (2010) 3 *Phoenix Law Review* 343 at 345.

students' values, habits of mind, perceptions, and interpretations of the legal world, as well as their understanding of their roles and responsibilities as lawyers and the criteria by which they define and evaluate professional success.' Thus, ultimately, whether it is the Socratic Method or any of the alternative pedagogical tools are used, the goal must be to train students to "become a lawyer". Whilst the qualities or attributes of an "ideal" or "good" lawyer are clearly beyond the scope of this paper, this central question constitutes the core of the inquiry of what methodology to use in law schools: the kind of lawyers law schools seeks to produce will determine the pedagogical tool most appropriate to be utilised.

5.2. Personal reflections

This exercise of interrogating the Socratic Method as pedagogical tool in legal education has been very enlightening. I have been trained in the Socratic Method having earned my law degree from the Philippines and my masters degree in law from Canada which are both largely patterned after the US model. I have used this same teaching style in my classes in the UOW School of Law for four years now and I have wondered if this is the most effective mode of delivery of teaching. Although my teaching style is not commonly practiced in Australian law schools, the responses I have received from my students as evidenced by my student evaluations have been overwhelmingly positive. This inquiry has provided me a better understanding of the Socratic Method, affording me the opportunity to see and weigh its strengths as well as its shortcomings as a pedagogical tool. I am confident that the insights and knowledge I gained from this exercise will prove invaluable in making me a better teacher.

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